

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL D SUMMERS,

Plaintiff,

v.

CLARK COUNTY JAIL, JACKIE
BATTIES, GARY E LUCAS, and
CONMED MEDICAL SERVICES,

Defendant.

CASE NO. C13-5484 BHS-JRC

ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL

This 42 U.S.C. §1983 civil rights matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1, MJR 3, and MJR 4.

Plaintiff asks the Court to compel defendants to answer interrogatories (Dkt. 40). Defendants responded and filed declarations (Dkt. 41 through 45). Plaintiff replied (Dkt. 46).

The Court denies plaintiff's motion because the parties have not meet and conferred as required by Fed. R. Civ. P. 37(a)(1). Local Rule 37 may not be available to plaintiff so the Court sets forth the entire text of the rule and copy of Appendix B is attached as an appendix to this order. Local Rule 37 states:

1 **FAILURE TO MAKE DISCLOSURE OR COOPERATE IN DISCOVERY; SANCTIONS**

2 **(a) Motion for Order Compelling Disclosure or Discovery**

3 (1) *Meet and Confer Requirement.* Any motion for an order compelling disclosure or
 4 discovery must include a certification, in the motion or in a declaration or affidavit, that
 5 the movant has in good faith conferred or attempted to confer with the person or party
 6 failing to make disclosure or discovery in an effort to resolve the dispute without court
 7 action. The certification must list the date, manner, and participants to the conference. If
 8 the movant fails to include such a certification, the court may deny the motion without
 9 addressing the merits of the dispute. A good faith effort to confer with a party or person
 10 not making a disclosure or discovery requires a face-to-face meeting or a telephone
 11 conference. If the court finds that counsel for any party, or a party proceeding pro se,
 12 willfully refused to confer, failed to confer in good faith, or failed to respond on a timely
 13 basis to a request to confer, the court may take action as stated in CR 11 of these rules.

9 (2) *Expedited Joint Motion Procedure.* A motion for an order compelling disclosure or
 10 discovery may be filed and noted in the manner prescribed in LCR 7(d)(3). Alternatively,
 11 the parties may, by agreement, utilize the expedited procedure set forth in this subsection.
 12 If the parties utilize this procedure, the motion may be noted for consideration for the day
 13 the motion is filed. After the parties have conferred, a party may submit any unresolved
 14 discovery dispute to the court through the following procedure:

12 (A) The moving party shall be responsible for preparing and filing a joint LCR 37
 13 submission to the court. An example of an LCR 37 submission is attached as
 14 Appendix B.

14 (B) The moving party may draft an introductory statement, setting forth the
 15 context in which the dispute arose and the relief requested. Each disputed
 16 discovery request and the opposing party's objection/response thereto shall be set
 17 forth in the submission. Immediately below that, the moving party shall describe
 18 its position and the legal authority which supports the requested relief.

17 The moving party shall provide the opposing party with a draft of the LCR 37
 18 submission and shall also make the submission available in computer-readable
 19 format.

19 (C) Within seven days of receipt of the LCR 37 submission from the moving
 20 party, the opposing party shall serve a rebuttal to the moving party's position for
 21 each of the disputed discovery requests identified in the motion. The opposing
 22 party may also include its own introductory statement. The opposing party's
 23 rebuttal for each disputed discovery request shall be made in the same document
 24 and immediately following the moving party's statement in support of the relief
 requested. If the opposing party no longer objects to the relief requested, it shall
 so state and respond as requested within seven days from the date the party
 received the draft LCR 37 submission. If the opposing party fails to respond, the
 moving party may file the LCR 37 submission with the court and state that no

1 response was received.

2 (D) The moving party's reply, if any, in support of a disputed discovery request
3 shall follow the opposing party's rebuttal for such request in the joint submission
4 and shall not exceed one half page for each reply.

5 (E) The total text that each side may contribute to a joint LCR 37 submission shall
6 not exceed twelve pages. This limit shall include all introductory or position
7 statements, and statements in support of, or in opposition to, a particular request,
8 but shall not include the discovery request itself.

9 (F) Each party may submit declarations for the purpose of attaching documents to
10 be considered in connection with the submission and to provide sufficient
11 information to permit the court to assess expenses and sanctions, if appropriate. If
12 a party fails to include information sufficient to justify an award of fees, it shall be
13 presumed that any request for fees has been waived. A declaration shall not
14 contain any argument.

15 (G) The moving party shall prepare a proposed order that identifies each of the
16 discovery requests at issue, with space following each of the requests for the
17 court's decision. This proposed order shall be attached as a Word or Word Perfect
18 compatible file to an e-mail sent to the e-mail orders address of the assigned judge
19 pursuant to the court's Electronic Filing Procedures.

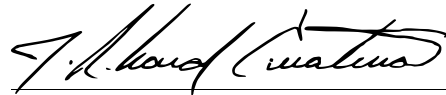
20 (H) The moving party shall be responsible for filing the motion containing both
21 parties' positions on the discovery disputes, any declarations submitted by the
22 parties, and the proposed form of order. The moving party shall certify in the
23 motion that it has complied with these requirements. The submission shall be
24 noted for consideration on the date of filing and shall be described as a "LCR 37
Joint Submission."

(I) If all parties agree to do so, they may use the expedited joint motion procedure
for other types of motions, including but not limited to motions to seal, motions
for relief from a deadline, and motions in limine. The timing and procedure shall
be the same as set forth above except that (1) instead of setting forth the disputed
discovery request and the opposing party's objection/response thereto, the moving
party should set forth the relief requested and the legal authority that supports the
requested relief, and (2) the moving party must submit a proposed order that sets
forth the relief requested.

Because plaintiff is incarcerated the Court will allow the parties to discuss their discovery
differences either telephonically or by written correspondence. The parties are still
required to make a good faith effort to resolve discovery disputes before further involving
the Court.

1 In addition, the Court denies plaintiff's motion because it is not in the format
2 required by this Court's Local Rule. The Court will set forth the entire Appendix B to this
3 order so that plaintiff has access to the required information. Plaintiff's motion is denied
4 without prejudice to his re-filing a proper motion that complies with both the Federal
5 Rules of Civil Procedure and this Court's Local Rules

6 Dated this 3rd day of April, 2014.

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8 J. Richard Creatura
9 United States Magistrate Judge
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CIVIL RULES
APPENDIX B. SUBMISSION REGARDING REQUEST FOR PRODUCTION
See LCR 37

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

JONES ACTOR,

Plaintiff,

v.

BIG ROSE FLOWER
 COMPANY,

Defendant.

No. C01-9999RSL

LCR 37 SUBMISSION REGARDING
 REQUEST FOR PRODUCTION
 NO. 17
 NOTE ON MOTION CALENDAR:
 [insert date]

I. MOVING PARTY'S INTRODUCTORY STATEMENT

Defendant Big Rose Flower Company is the moving party for this submission. Plaintiff Jones Actor is seeking more than \$2.5 million in damages, claiming that at the time he purchased Big Rose stock, Big Rose allegedly failed to disclose that the property owned by Big Rose for growing flowers would be unable to produce a suitable crop in 2000. It is claimed that these alleged misstatements violated Section 10(b) of the 1934 Securities Exchange Act and the Washington Securities Act.

These allegations are untrue. Further, Actor is a director of a company that is also in the flower business, Fleurs 'R' Nous Company, and he was undoubtedly aware of the problems caused by the 1999 drought, which affected all flower producing companies in the Northwest.

II. RESPONDING PARTY'S STATEMENT

Jones Actor purchased nearly \$3 million of stock in Big Rose--stock that is worth less than \$500,000 today. He purchased this substantial amount of stock because of glowing reports from Big Rose regarding its prospects for future profits.

1 However, things were not as rosy as they seemed. All of Big Rose's land holdings used to
 2 produce flowers were not only severely parched by the 1999 drought, but also contaminated with
 chemicals because of a mistake in choosing fertilizers. Big Rose knew that it was unlikely that
 3 these chemicals could be removed from the soil in time to produce a profitable crop for 2000.
 When this information was finally disclosed to the public, Big Rose stock plummeted in value.

4 **III. DISPUTED DISCOVERY REQUESTS**

5 REQUEST FOR PRODUCTION 17: Please produce all income tax returns for 1995 through
 2000 for the Fleurs 'R' Nous Company.

6 RESPONSE: Actor objects to this request on the grounds that it calls for information neither
 7 relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further, the
 information sought is confidential.

8 **Moving Party's Argument**

9 Actor claims that he was deceived by the alleged omissions of information from Big Rose's
 public statements. To defend against this claim, Big Rose will show that Actor is a sophisticated
 10 individual, who was aware of the risks in the flower business and who also had information
 obtained by Fleurs 'R' Nous regarding the problems that Big Rose was having with its land at the
 11 time he was buying Big Rose stock. Defendants in security cases are properly allowed to obtain
 tax returns, because they help show the plaintiff's degree of sophistication and understanding of
 12 the risks of investment. *Davis v. Big Co.*, 123 F.3d 777, 788 (9th Cir. 1999). Further, the tax
 return may identify individuals with knowledge of Actor's understanding of the industry.

13 **Responding Party's Response**

14 While it is true that tax returns may be produced to show the degree of sophistication of a
 15 securities plaintiff, the tax returns sought here are not Actor's personal tax returns, but rather the
 tax returns for a company in which he is a director and part owner. That company is not a party
 16 to these proceedings. Non-parties should not be forced to produce their tax returns absent very
 compelling reasons. *Westminster v. Abbey*, 867 F.3d 309, 312 (9th Cir. 1999). No compelling
 17 reasons have been presented. Fleurs 'R' Nous is not a publicly traded company, and its financial
 and other information is maintained as confidential. It is a competitor of Big Rose, and
 18 disclosure of this information through discovery could be harmful.

19 **Moving Party's Reply**

20 Actor's supposed concern about Fleurs 'R' Nous' confidential information can be addressed
 through a protective order. Big Rose will agree not to disclose this information to persons other
 21 than counsel and experts absent agreement of the parties or further order of the court. While
 Fleurs 'R' Nous is not a party, its tax returns may contain information about money spent
 22 addressing the drought problem that was common to several floral companies. Thus, the
 information could lead to the discovery of admissible evidence.

23 **CERTIFICATION**

1 I certify that the full response by the responding party has been included in this submission, and
2 that prior to making this submission the parties conferred to attempt to resolve this discovery
dispute in accordance with LCR 37(a).

3 DATED:

4 Ira Just (WSBA #1234) Attorneys for Big Rose Company Moving Party

5 LCR 37 SUBMISSION

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